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July 11, 2016

VIA EMAIL: KIMBERLY.ROBINSON@LA.GOV; PARICH@LSU.EDU; AND U.S. MAIL

Kimberly Lewis Robinson, Esq.
Secretary of Revenue
Louisiana Department of Revenue
617 N 3rd St
Baton Rouge, LA 70802

Dr. James A. Richardson
Director, Public Administration Institute
Louisiana State University
3200 Patrick Taylor Hall
Baton Rouge, LA 70803

Re: Louisiana Heavy Equipment Rental Taxation Coalition – Additional Documents for Submission to the Task Force on Structural Changes in Budget & Tax Policy

Dear Kim and Jim:

At the meeting of the Task Force on Structural Changes in Budget & Tax Policy on June 10, 2016, members of the Task Force requested additional information from the Heavy Equipment Rental Taxation Coalition regarding the tax implications of transactions involving purchases, rentals and sales of heavy equipment rental inventory items. In response to the requests, enclosed are the following documents:

1. Reform Recommendations from the Heavy Equipment Rental Taxation Coalition;

2. A comparison of Texas and Louisiana sales/use taxes on purchases, rentals and sales of a crane;

3. A statement by the Executive Committee Task Force on State and Local Taxation of the National Conference of State Legislatures entitled "Principles for the Taxation of Business Personal Property"; and

4. A list of members of the NCSL Task Force on State & Local Taxation (including Senator Neil Riser and Representative Julie S. Stokes).

Please include the attachments in the records of the Task Force. Also, please do not hesitate to contact me if you have any questions, comments or need additional information.

Thank you for the opportunity to present our position to the Task Force.

Sincerely,

Bill

William M. Backstrom, Jr.

WMB,JR/gmj
Enclosures

Reform Recommendations from Heavy Equipment Rental Coalition

Sales/Use Tax Reforms - Heavy Equipment Rental Transactions

In order to eliminate or reduce the disparity in the sales/use taxation of the equipment rental industry, return Louisiana to a competitive posture, restore long-standing, sound tax policies, and eliminate the triple tax scenario currently in place for equipment rental transactions, the State should fully restore the sales/use tax exclusions in La. R.S. 47:301(10)(a) and La. R.S. 47:301(14)(a) (together, the "Rental Exclusion"), which were "temporarily" and partially suspended by Act No. 25 of the 2016 1st Special Session of the Louisiana Legislature.[1] By fully restoring the Rental Exclusion, purchases of items of tangible personal property for lease or rental in arm's length transactions would not be subject to Louisiana state or local sales/use taxes. Unless otherwise specifically excluded or exempt, leases and rentals of such items by dealers would continue to be subject to both state and local sales taxes on the lease or rental payments.

Inventory Tax Credit Reforms - Heavy Equipment Rental

Treat a heavy equipment rental fleet as inventory for Louisiana *ad valorem* property tax purposes and for purposes of the Louisiana credit for local property taxes paid on such inventory, as provided in La. R.S. 47:6006 (as it was prior to its amendment by Act No. 415 of the 2015 Regular Session of the Louisiana Legislature).

Treating a heavy equipment rental fleet as inventory reflects the true nature of this equipment that is purchased as a business input, similar to other retail businesses. This also puts Louisiana on par with other states, including surrounding states that treat a heavy equipment rental fleet as inventory.

[1] Note that Act No. 26 of the 2015 1st Special Session of the Louisiana Legislature (adding the "clean penny" of state sales/use tax) recognizes sound tax policy by specifically providing that the Rental Exclusion applies to the new, 1% state-level sales/use tax.

With the recent legislative changes, it now costs owners of heavy equipment rental inventory more in taxes to do business in Louisiana:

Original Acquisition Cost $1,000,000

		Lake Charles, LA	Beaumont, TX	
Crane Purchased for Rental/Lease State Sales Tax **(Sales Tax Borne by Owner)**		$20,000	$0	TX- Exempt as purchase for resale
Crane Rented at $360K /year	YR-1	$38,700	$35,100	Est. State and Local Sales Tax on Rental
	YR-2	$38,700	$35,100	Est. State and Local Sales Tax on Rental
	YR-3	$38,700	$35,100	Est. State and Local Sales Tax on Rental
Property Tax Due **(Tax in LA borne by Owner)**	YR-1	$16,900	$696	TX-Inventory subject to Pass Thru dealer Tax
	YR-2	$16,600	$696	TX-Inventory subject to Pass Thru dealer Tax
	YR-3	$15,700	$696	TX-Inventory subject to Pass Thru dealer Tax
Retail sale of Crane @75% of Cost		$80,625	$73,125	Est. Sate and Local Sales Tax on Sale
			$1,448	TX- Dealer Inventory Tax on Sale
Total Tax Burden on Rental Crane		$265,925	$181,961	
Total Add'l Tax on Crane located in LA versus TX		**$83,964**	**$0**	**46% overall higher taxes paid in LA**
Actual Burden Borne by Rental Crane Owner in LA		**$69,200**	**$0**	**Problem: Owner incurs $69K in taxes to operate just one crane in LA that an owner in TX Does Not**

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Principles for the Taxation of Business Personal Property

Executive Committee Task Force on State and Local Taxation

Personal property taxes are *ad valorem* taxes on all property other than real property (*i.e.*, real property is land and permanent improvements affixed to land, while personal property is unaffixed or movable property). Although the name suggests that personal property taxes are paid by individuals, the majority of the tax liability falls on business due to the broad exemptions that exist in most states for household personal property, for motor vehicles and for intangible property (*e.g.,* good will, cash, and bonds). Business personal property tends to be divided into several classes, often with different rules, rates, and base calculations for each. And unlike real property, which is typically valued by an assessor working for the government, personal property taxes are self-reporting, requiring taxpayers to file annual reports detailing their assets and income.

Taxes on business personal property do not align with common principles of taxation (such as neutrality, efficiency, transparency, benefit, or ability-to-pay); distort markets by discouraging capital investment, expansion, and replacement; and impose high administrative and compliance costs. Since property taxes are primarily a local revenue source, the current business personal property tax system is characterized by inconsistency within states regarding property classification, assessment methods and ratios, and other rules, creating complexity and confusion for taxpayers.

Recognizing the economically detrimental nature of personal property taxes, most states have enacted provisions limiting their scope or simplifying administration, and several have eliminated them altogether.

The National Conference of State Legislatures' Executive Committee Task Force on State and Local Taxation has undertaken a process to study and better understand the taxation of business personal property. Based on this effort, the Task Force finds that to ensure that personal property taxation remains neutral and does not deter business investment, states should explore opportunities to reduce or eliminate business personal property taxes.

However, the Task Force recognizes that state-mandated repeal or limitation of business personal property taxes presents intergovernmental challenges. If repeal of these taxes is not feasible, the Task Force finds that states should consider administrative simplifications to ease the compliance burden imposed on business personal property taxpayers.

The Task Force recommends the following principles for consideration by states seeking to improve laws governing the taxation of business personal property.

1. **States seeking to limit the distortive effects of a tax on capital investment should consider:**

   - Providing a *de minimis* exemption (exempting property valued under a specific dollar threshold) and indexing such exemptions for inflation;
   - Exempting new business property for a fixed number of years (or alternatively, exempting new personal property from the tax indefinitely, as well as personal property classified as an expansion of an existing business);
   - Providing an exemption for all types of business inventory, and defining inventory broadly to reflect different forms of inventory (*e.g.,* rental equipment offered for sale or spare parts retained in a storage facility);
   - Allowing businesses to be exempted from the tax if they can show their cost of calculation and filing is higher than the amount of tax that would be owed;
   - Prohibiting exempt personal property from being recategorized as real property; and
   - Allowing local options to reduce or repeal personal property taxes.

2. **States working to reduce the high compliance costs imposed on businesses subject to personal property taxation should:**

   - Carefully define the different types or classes of personal property to provide clarity for businesses when they are self-reporting personal property;
   - Ensure that definitions are applied on a statewide basis to simplify compliance for businesses with personal property in multiple jurisdictions within the state and that final oversight authority lies with the state;
   - Require and provide uniform filing forms, valuation standards, assessment standards, and depreciation and obsolescence schedules that do not differ based on locality;
   - Provide the option for business to calculate and remit taxes electronically;
   - Provide (but not mandate the use of) a state portal in which taxpayers may file all local personal property taxes online at no cost to them;
   - Ensure all filing dates and other deadlines are uniform throughout the state; and
   - Consider administrative accommodations or substitute taxes for taxpayers with highly mobile property that will be used in multiple locations (within the state or in multiple states) throughout the tax year (*e.g., h*eavy equipment rentals).

NCSL Task Force On State & Local Taxation

Co-Chair: Senator Pamela J. Althoff, Illinois
Co-Chair: Delegate Sheila E. Hixson, Maryland
Co-Chair: Representative Chris Perone, Connecticut

NCSL Contacts: Max Behlke (D.C.) Neal Osten (D.C.) Mandy Rafool (Denver)

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